

AMENDED IN ASSEMBLY MAY 14, 1996  
AMENDED IN ASSEMBLY MAY 2, 1996  
AMENDED IN ASSEMBLY APRIL 16, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2400**

**Introduced by Assembly Member Miller**

February 16, 1996

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An act to ~~amend Section 22600 of the Education Code, to~~ amend Sections 20303, 20305, and 20610 of, to add Section 20616.5 to, and to repeal Section 20616 of, the Government Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2400, as amended, Miller. School employees: local retirement systems.

(1) Existing law provides that ~~all teachers in the public schools are members of the State Teachers' Retirement System and that other~~ *classified* school employees are members of the Public Employee's Retirement System. Existing law authorizes local agencies, including school districts, to establish pension trusts for the benefit of their officers and employees.

This bill would provide that members of a local system established under the pension trust provisions are excluded from ~~the State Teachers' Retirement System and the Public Employees' Retirement System.~~

(2) The Public Employees' Retirement Law provides that county superintendents of schools do not have the authority to elect various optional benefits or to terminate the contract for inclusion in the retirement system.

This bill would delete that exclusion thereby permitting election of optional benefits and the termination of that contract.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares  
2 that cities, counties, and other public agencies are  
3 authorized to contract with the Public Employees'  
4 Retirement System to provide benefits for officers and  
5 employees, subject to statutory exclusions and conditions  
6 and the terms of their contracts.

7 (b) It is the intent of the Legislature in enacting this  
8 act that the Board of Administration of the Public  
9 Employees' Retirement System interpret and enforce its  
10 decisions relating to the contractual arrangements of  
11 those public agencies consistent with the intent of the law  
12 relating to contract exclusions and employee eligibility  
13 when covered by a local retirement system.

14 (c) It is further the intent of the Legislature to provide  
15 that *cities, counties, and other public agencies, including*  
16 *but not limited to*, school districts, county offices of  
17 education, and community college districts shall have the  
18 right to maintain and implement local agency plans, *as*  
19 *provided under existing law, or to participate in the*  
20 *Public Employees' Retirement System. School districts*  
21 *and community college districts may participate in the*  
22 *system* through county superintendents of schools, or ~~to~~  
23 *may* contract directly with the system, as determined by  
24 the governing body of the local agency.

25 (d) *It is further the intent of the Legislature that safety*  
26 *employees shall not be subject to this act except to the*  
27 *extent negotiated by appropriate collective bargaining*  
28 *agreement.*



1 ~~SEC. 2. Section 22600 of the Education Code is~~  
2 ~~amended to read:~~

3 ~~22600. (a) Persons employed in a position requiring~~  
4 ~~membership in this system, including, but not limited to,~~  
5 ~~employees of school districts, community college~~  
6 ~~districts, and county offices of education, but who are~~  
7 ~~members of a local system established pursuant to Article~~  
8 ~~1.5 (commencing with Section 53215) of Chapter 2 of~~  
9 ~~Division 2 of Title 5 of the Government Code or a county~~  
10 ~~retirement system are excluded from membership in the~~  
11 ~~system. A person so excluded shall retain the right to~~  
12 ~~receive a retirement allowance for nonlocal service that~~  
13 ~~is creditable in the system unless he or she withdraws his~~  
14 ~~or her contributions for that allowance.~~

15 ~~(b) Notwithstanding any other provision of law, this~~  
16 ~~chapter shall not be construed to authorize the board to~~  
17 ~~nullify, restrict, or negate the right of any person to~~  
18 ~~participate in a local system.~~

19 ~~SEC. 3.~~

20 ~~SEC. 2. Section 20303 of the Government Code is~~  
21 ~~amended to read:~~

22 ~~20303. (a) Persons who are members of any other~~  
23 ~~retirement or pension system supported wholly or in part~~  
24 ~~by funds of the United States government, any state~~  
25 ~~government or political subdivision thereof and who are~~  
26 ~~receiving credit in the other system for service are, as to~~  
27 ~~that service, excluded from this system.~~

28 ~~(b) If a public agency establishes or maintains a~~  
29 ~~retirement system pursuant to Article 1.5 (commencing~~  
30 ~~with Section 53215) of Chapter 2 of Title 5, the employees~~  
31 ~~who are members of that system shall be excluded from~~  
32 ~~this system and from health care benefit coverage~~  
33 ~~pursuant to Part 5 (commencing with Section 22751).~~  
34 ~~This section shall not affect the right of a public agency~~  
35 ~~to include its employees in that health care benefit~~  
36 ~~coverage or other benefit plans as a result of collective~~  
37 ~~bargaining agreements. That exclusion shall not be~~  
38 ~~affected by the terms of any contract between this system~~  
39 ~~and the agency. For purposes of this section an employee~~  
40 ~~shall be deemed to be receiving credit for any period of~~

1 employment for which an employer is making  
2 contributions to a Section 401(a) of Title 26 of the United  
3 States Code tax qualified plan unless that exception is  
4 provided for in this section.

5 (c) If an employee participating in this system  
6 receives less than fifty percent of a year of service credit  
7 in a fiscal year, and the employee is eligible for a  
8 retirement system established or maintained by the  
9 public agency pursuant to Article 1.5 (commencing with  
10 Section 53215) of Chapter 2 of Title 5 the employee shall  
11 participate in that system. That participation shall begin  
12 in the first year following the fiscal year in which the  
13 employee first receives less than 50 percent of a year of  
14 service credit in this system and shall continue thereafter;  
15 *until the time that the employee receives more than fifty*  
16 *percent of a year of service credit in a fiscal year and*  
17 *reenters this system.*

18 (d) For the purpose of this section, persons who  
19 merely are receiving pensions or retirement allowances,  
20 or other payments, from any source whatever, on account  
21 of service rendered to an employer other than the state  
22 and while they were not in state service, are not, because  
23 of that receipt, members of any other retirement or  
24 pension system.

25 (e) For the purposes of this section only, persons who  
26 merely participate in a deferred compensation plan  
27 established pursuant to Chapter 4 (commencing with  
28 Section 19993) of Part 2.6 of Division 5 of Title 2 or  
29 established pursuant to Article 1.1 (commencing with  
30 Section 53212) of Chapter 2 of Part 1 of Division 2 of Title  
31 5, are not, because of that participation, members of any  
32 other retirement or pension system.

33 (f) For the purposes of this section only, persons who  
34 participate in a supplementary money purchase pension  
35 plan and trust that meets the requirements of Section  
36 401(a) of Title 26 of the United States Code are not,  
37 because of that participation, members of any other  
38 retirement or pension system, so long as the contracting  
39 agency has received a ruling from the Internal Revenue  
40 Service stating that the money purchase pension plan and

1 trust qualifies under Section 401(a) and furnishes proof  
2 thereof upon request by the board.

3 ~~SEC. 4.~~

4 *(g) Notwithstanding any other provision of law, this*  
5 *part shall not be construed to restrict the ability of public*  
6 *agencies, including but not limited to, schools and*  
7 *community college districts, cities, counties, and the*  
8 *collective bargaining representatives of the employees of*  
9 *those public agencies, to enter into collective bargaining*  
10 *agreements to establish, maintain, and negotiate the*  
11 *terms of retirement benefits for their employees.*

12 SEC. 3. Section 20305 of the Government Code is  
13 amended to read:

14 20305. (a) An employee serving on a less than  
15 full-time basis is excluded from this system unless:

16 (1) He or she is a member at the time he or she renders  
17 less than full-time service and is not otherwise excluded  
18 pursuant to this article or by a provision of a contract.

19 (2) His or her position requires regular, part-time  
20 service for one year or longer for at least an average of 20  
21 hours a week, or requires service that is equivalent to at  
22 least an average of 20 hours a week, unless he or she elects  
23 membership pursuant to Section 20325.

24 (3) His or her employment is, in the opinion of the  
25 board, on a seasonal, limited-term, on-call, emergency,  
26 intermittent, substitute, or other irregular basis, and is  
27 compensated and meets one of the following conditions:

28 (A) The appointment or employment contract fixes a  
29 term of full-time, continuous employment in excess of six  
30 months or, if a term is not fixed, full-time employment  
31 continues for longer than six months, in which case  
32 membership shall be effective not later than the first day  
33 of the first pay period of the seventh month of  
34 employment.

35 (B) The person works more than 125 days, if employed  
36 on a per diem basis or, if employed on other than a per  
37 diem basis, 1,000 hours within the fiscal year, in which  
38 case, membership shall be effective not later than the first  
39 day of the first pay period of the month following the  
40 month in which 125 days or 1,000 hours of service were

1 completed. For purposes of this subdivision, “day” means  
2 each eight-hour period of employment worked by an  
3 employee paid on a per diem basis so that membership is  
4 effective after he or she has completed 1,000 hours of  
5 compensated service in a fiscal year.

6 (C) The person is employed by the Department of  
7 Forestry and Fire Protection in one of the positions that  
8 provide state safety membership pursuant to Section  
9 20400 or state peace officer/firefighter membership  
10 pursuant to Section 20392.

11 (4) He or she is a temporary faculty member of the  
12 California State University who works two consecutive  
13 semesters or three consecutive quarters at half-time or  
14 more and is not otherwise excluded pursuant to this  
15 article, in which case, membership shall be effective with  
16 the start of the next consecutive semester or quarter if the  
17 appointment requires service of half-time or more.

18 (5) He or she is a member of the Board of Prison  
19 Terms, the State Personnel Board, or the State Air  
20 Resources Board and elects to become a member  
21 pursuant to Section 20320.

22 (6) He or she is participating in partial service  
23 retirement, pursuant to Article 1.7 (commencing with  
24 Section 19996.30) of Chapter 7 of Part 2.6.

25 (7) He or she is included by specific provision of the  
26 board relating to the exclusion of less than full-time  
27 employees.

28 (b) This section shall supersede any contract provision  
29 excluding persons in any temporary or seasonal  
30 employment basis and shall apply only to persons  
31 entering employment on and after January 1, 1975.  
32 Except as provided in Section 20502, no contract or  
33 contract amendment entered into after January 1, 1981,  
34 shall contain any provision excluding persons on an  
35 irregular employment basis.

36 (c) This section shall not be construed to include  
37 employees excluded from the system by the terms of a  
38 public agency contract with this system, nor shall this  
39 section supersede exclusions contained in Section 20303  
40 or 20894.



1 *Notwithstanding any other provision of law, this part*  
2 *shall not be construed to restrict the ability of public*  
3 *agencies, including but not limited to, schools and*  
4 *community college districts, cities, counties, and the*  
5 *collective bargaining representatives of those public*  
6 *agencies, to enter into collective bargaining agreements*  
7 *to establish, maintain, and negotiate the terms of*  
8 *retirement benefits for their employees.*

9 ~~SEC. 5.~~

10 SEC. 4. Section 20610 of the Government Code is  
11 amended to read:

12 20610. Every county superintendent of schools shall  
13 enter into a contract with the board for the inclusion in  
14 this system of (a) all of the employees of the office of  
15 county superintendent whose compensation is paid from  
16 the county school service fund other than employees  
17 electing pursuant to Section 1313 of the Education Code  
18 to continue in membership in a county system; and (b)  
19 all of the employees of school districts and community  
20 college districts existing on July 1, 1949, or thereafter  
21 formed, within his or her jurisdiction, other than school  
22 districts that are contracting agencies or that maintain a  
23 district, joint district, or other local retirement system  
24 pursuant to Article 1.5 (commencing with Section 53215)  
25 of Chapter 2 of Division 2 of Title 5, in respect to service  
26 rendered in a status in which they are not eligible for  
27 membership in the State Teachers' Retirement System.  
28 The effective date of each contract shall be not later than  
29 July 1, 1949. For the purposes of this part those school  
30 district employees shall be considered to be employees of  
31 the county superintendent of schools having jurisdiction  
32 over the school district by which they are employed and  
33 service to the district shall be considered as service to the  
34 county superintendent of schools.

35 ~~SEC. 6.~~

36 SEC. 5. Section 20616 of the Government Code is  
37 repealed.

38 ~~SEC. 7.~~

39 SEC. 6. Section 20616.5 is added to the Government  
40 Code, to read:

1 20616.5. Notwithstanding any other provision of law,  
2 school and community college districts may establish and  
3 maintain a district, joint district, or other local retirement  
4 system pursuant to Article 1.5 (commencing with Section  
5 53215) of Chapter 2 of Division 2 of Title 5, may enter into  
6 a contract with the board, or may designate the county  
7 superintendent of schools to enter into a contract on their  
8 behalf pursuant to Section 20610.

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